IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5975 of 2007()

CRIME NO. 308/99 OF OACHIRA POLICE STATION
CC.835/2004 of J.M.F.C.,KARUNAGAPPALLY

.....

PETITIONER/IST ACCUSED

NAVAS KHAN, S/O.AKBAR KHAN, AGED 35
YEARS, KUNNETHU HOUSE, PAYIKUZHIMURIYIL,
OACHIRA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.BIJU M.JOHN
SMT.NIKHILA SOMAN

RESPONDENTS: COMPLAINANT/STATE
---

1. THE SUB INSPECTOR OF POLICE,
OACHIRA POLICE STATION,
KOLLAM DISTRICT.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5975 of 2007

- -

Dated this the 3rd day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 379 I.P.C. The petitioner is the first accused. The case was registered as early as in 2004. At the crime stage, the petitioner was granted bail. But after cognizance has been taken, the petitioner had not entered appearance. The learned Magistrate has issued coercive processes against the petitioner. He finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He had no knowledge of the proceedings initiated before the learned Magistrate after cognizance. He had gone abroad in search of employment. It is in these circumstances that the petitioner could not appear before the learned Magistrate. He is willing to surrender before the learned Magistrate and seek bail. He shall co-operate with the Court for the expeditious

disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

tm